

ARTICLE IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. This Project shall be directed and administered on behalf of the Parties by Executive Agents (EAs) and Project Managers (PMs) appointed by the Parties. The EAs shall have overall authority over the PMs, in accordance with this Agreement. The PMs shall have primary responsibility for effective implementation, efficient management, and direction of the Project in accordance with this Agreement. The Parties shall maintain and fund their own organizations for managing this Project.

4.2. The following, or equivalent in the event of reorganization, are designated as EAs:

4.2.1. The Air Force Program Executive Office for Command and Control Systems (AF/PEO/C2) (DOD/EA) and the Chief, Air Command and Control Sensors Division, NC3A (NATO/EA). In the event that the EAs are unable to reach a timely decision on an issue, each EA shall refer the issue to its higher authority for resolution.

4.3. The EAs shall be responsible for:

4.3.1. Exercising executive-level oversight of the Project.

4.3.2. Reviewing progress in meeting system requirements.

4.3.3. Reviewing the financial status of the Project to ensure compliance with the provisions of Article V (Financial Provisions).

4.3.4. Resolving issues brought forth by the PMs.

4.3.5. Reviewing and forwarding to the Parties for approval recommended amendments to this Agreement in accordance with Article XVI (Amendment, Termination, Entry Into Force, and Duration).

4.3.6. Monitoring Third Party sales and transfers authorized in accordance with Article XI (Third Party Sales and Transfers and Alternate Uses).

4.3.7. Reviewing the semi-annual status report submitted by the PMs.

4.4. The assignment of management responsibilities for each task will coincide with task assignment. Each PM is responsible for management of its respective tasks.

4.5. Project offices shall be established at Hanscom Air Force Base, Massachusetts and at the NC3A, The Hague, Netherlands to manage the Project. The Department of the Air Force shall appoint the U.S. PM, and the NC3A shall appoint the NATO PM, both of

whom shall be responsible for implementing this Agreement and for carrying out the Project.

4.6. For matters under their cognizance the PMs shall be responsible for:

4.6.1. Managing the cost, schedule, performance requirements, technical, and financial aspects of the Project.

4.6.2. Executing the financial aspects of the Project in accordance with Article V (Financial Provisions) of this Agreement.

4.6.3. Referring issues to the EAs that cannot be resolved by the PMs.

4.6.4. Developing and recommending amendments to this Agreement to the EAs.

4.6.5. Maintaining oversight of the security aspects of the Project, including reviewing and obtaining approval from the appropriate Designated Security Authorities of a Project Security Instruction and a Classification Guide prior to the transfer of Classified Information or Controlled Unclassified Information.

4.6.6. Providing a semi-annual status report to the EAs, and other such reports as directed by the EAs.

4.6.7. Exercising configuration management.

4.6.8. Reviewing requests from the other Party to attend in observer status the Party's program reviews.

ARTICLE V

FINANCIAL PROVISIONS

5.1. Each Party shall contribute its equitable share of the full costs of the Project, including overhead costs and administrative costs. The assignment of work represents an equitable sharing of work to be performed under the Project, and each Party shall receive an equitable share of the results of the Project.

5.2. The Parties estimate that the performance of the obligations under this Agreement shall not cost more than a total Cost Ceiling of \$1.4M 2001 U.S. dollars. The U.S. dollar shall be the reference currency for the Project and the Project fiscal year shall be the U.S. fiscal year.

5.3. The full costs of the Project, as identified in this Article, shall be shared according to the following percentages:

<u>Party</u>	<u>Percentage Share</u>
United States	50
NC3A	50

5.4. The Parties shall use their best efforts to perform, or to have performed, the work specified in Article III (Scope of Work) and fulfill all the obligations under this Agreement within the agreed Cost Ceiling for total Project costs.

5.5. Each Party shall bear the full costs it incurs for performing, managing and administering its activities under this Agreement. These costs include financial and non-financial costs (e.g., salaries, travel and per-diem costs for its Project personnel) as well as any Contract costs.

5.6. Cooperative efforts of the Parties over and above the jointly agreed work set forth in Article III (Scope of Work) shall be subject to future agreement by the Parties.

5.7. The following costs shall be borne entirely by the Party incurring the costs:

5.7.1. Costs associated with any unique requirements identified by a Party.

5.7.2. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.

5.8. Costs borne by a Party, in accordance with paragraph 5.7, shall not be considered as contributions to the cost sharing arrangements of the Project.

5.9. A Party shall promptly notify the other Party if available funds are not adequate to fulfill its obligations under this Agreement. If a Party notifies the other Party that it is terminating or reducing its funding for this Project, both Parties shall immediately consult with a view toward continuation on a modified basis.

ARTICLE VI

CONTRACTING PROVISIONS

6.1. If either Party determines that Contracting is necessary to fulfill that Party's obligations under Article III (Scope of Work) of this Agreement, that Party shall contract in accordance with applicable laws, regulations and procedures.

6.2. When one Party individually contracts to perform a task under this Agreement in accordance with paragraph 6.1, it shall be solely responsible for its own Contracting, and the other Party shall not be subject to any liability arising from such Contracts.

6.3. For all Contracting activities performed by either Party, the PMs shall, upon request, be provided a copy of all statements of work.

6.4. Each Party's Contracting Agency shall negotiate to obtain the rights to use and disclose Project Information required by Article VII (Disclosure and Use of Project Information). Each Party's Contracting Agency shall insert into its prospective Contracts (and require its subcontractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VII (Disclosure and Use of Project Information), Article VIII (Controlled Unclassified Information), Article X (Security) and Article XI (Third Party Sales and Transfers and Alternate Uses). During the Contracting process, each Party's Contracting Officer shall advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that shall restrict that Party's freedom to disclose information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.5. In the event a Party's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VII (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter shall be referred to higher authority for resolution.

6.6. Each Party's PM shall promptly advise the other Party's PM of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

ARTICLE VII

DISCLOSURE AND USE OF PROJECT INFORMATION

7.1. General: Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Parties intend to acquire sufficient Project Information and rights to use such information to enable Engineering, Manufacturing and Development (EMD). The nature and amount of Project Information to be acquired shall be consistent with the objectives stated in Article II (Objectives) and Article III (Scope of Work). Exchanges of information under this Agreement shall be conducted on a reciprocal, balanced basis, such that the information transferred by each Party shall be of essentially equal value.

7.2. Project Foreground Information

7.2.1. Disclosure: Project Foreground Information shall be disclosed without charge to both Parties.

7.2.2. Use: Each Party may use or have used all Project Foreground Information without charge for Defense Purposes. The Party generating Project Foreground Information shall also retain all its rights thereto. If a Party intends to use any Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Article XI (Third Party Sales and Transfers and Alternate Uses) of this Agreement shall also apply.

7.3. Project Background Information

7.3.1. Disclosure: Each Party, upon request, shall disclose without charge to the other Party any relevant Project Background Information, provided that:

7.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

7.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

7.3.1.3. disclosure is consistent with disclosure policies and regulations of the furnishing Party.

7.3.2. Use: Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Purposes only. The furnishing Party shall retain all its rights with respect to such Project Background Information.

7.4. Proprietary Project Information

7.4.1. All Project Information subject to proprietary rights shall be identified and marked, and it shall be handled as Controlled Unclassified Information.

7.4.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, shall apply to proprietary Project Information related to this Agreement.

7.5. Patents developed under the Project

7.5.1. Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Project Invention. The Party which has or receives title to such Project Invention shall in countries file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, or its Contractors, as

appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.

7.5.2. The other Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.

7.5.3. The other Party shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, throughout the world for Defense Purposes, any Project Invention.

7.5.4. Patent applications which contain Classified Information, to be filed under this Agreement, shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

7.5.5. Each Party shall notify the other Party of any Patent infringement claims it receives arising in the course of work performed under the Project. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all such Patent infringement claims and shall consult with the other Party during the handling, and prior to any settlement, of such claims. Cost share for resolving Patent infringement claims arising from Project Background Information shall be paid in a percentage to be mutually determined by the Parties. Cost share for resolving Patent infringement claims arising from Project Foreground Information shall be paid in the same percentage as the Parties share in the full financial and non-financial costs of the Project. The Parties shall, in accordance with applicable laws and practices, give their authorization and consent for all use and manufacture of any invention covered by a Patent.

ARTICLE VIII

CONTROLLED UNCLASSIFIED INFORMATION

8.1. Except as otherwise provided in this Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

8.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article VII (Disclosure and Use of Project Information).

8.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 8.1.1., and shall be subject to the provisions of Article XI (Third Party Sales and Transfers and Alternate Uses).

8.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 8.1.2., unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

8.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Project Security Instruction.

8.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 8.1.

8.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE IX

VISITS TO ESTABLISHMENTS

9.1. Each Party shall permit visits to its establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

9.2. All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

9.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the Project.

9.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with established recurring visit procedures.

ARTICLE X

SECURITY

10.1. All Classified Information or material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded by NATO in a manner no less stringent than NATO document C-M(55)15 (Final), dated 1 Oct 1990, "Security Within the North Atlantic Treaty Organization," including all supplements and amendments thereto. All Classified Information or material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded by the DOD in accordance with its national laws and regulations, providing it is in a manner no less stringent than that provided in NATO document C-M(55)15 (Final), dated 1 Oct 1990, "Security Within the North Atlantic Treaty Organization," including all supplements and amendments thereto.

10.2. Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

10.3. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 10.9., unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

10.3.1. The recipient shall not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Party in accordance with the procedures set forth in Article XI (Third Party Sales and Transfers and Alternate Uses).

10.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement.

10.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement.

10.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each

Party also shall promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

10.5. The PM shall prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information and material shall be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide shall be developed by the PM within three months after this Agreement enters into force. They shall be reviewed and forwarded to the appropriate DSA, and shall be applicable to all government and Contractor personnel participating in the Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

10.6. The DSA of a Party that awards a classified Contract under this Agreement shall assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information received under this Agreement, the recipient Party shall:

10.6.1. Ensure that such Contractor, prospective Contractor, or subcontractors and their facilities have the capability to protect the Classified Information adequately.

10.6.2. Grant a security clearance to the facilities, if appropriate.

10.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.

10.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this Agreement.

10.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

10.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Agreement.

10.7. Contractors, prospective Contractor, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a non-NATO country, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or entities of a Third

Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

10.8. For any facility wherein Classified Information or material is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information or material involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

10.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the Project.

10.10. Information or material provided or generated pursuant to this Agreement may be classified as high as Secret. The existence of this Agreement is Unclassified and the contents are Unclassified.

ARTICLE XI

THIRD PARTY SALES AND TRANSFERS AND ALTERNATE USES

11.1. Except to the extent permitted in paragraph 11.2., the Parties shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information to any Third Party without the prior written consent of the other Party. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner, without the prior written consent of the other Party. Such consent shall not be given unless the government of the intended recipient agrees in writing with the Parties that it shall:

11.1.1. Not retransfer, or permit the further retransfer of, any information provided; and

11.1.2. Use, or permit the use of, the information provided only for the purposes specified by the Parties.

11.2. Each Party shall retain the right to use, sell, transfer title to, disclose, or transfer possession of Project Foreground Information:

11.2.1. Generated solely by either that Party or that Party's Contractors in the performance of that Party's work allocation under Article III (Scope of Work); and

11.2.2. Whose generation, use, test or evaluation has not relied (and does not rely) in any way, on the Project Foreground Information generated or provided by the other Party, or Project Background Information generated or provided by the other Party.

11.3. In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Party intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 11.2., the matter shall be brought to the immediate attention of the other Party's PM. The Parties shall resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

11.4. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Background Information provided by the other Party to any Third Party without the prior written consent of the Party which provided such information. The providing Party shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers. A Party will not refuse approval for a transfer or disclosure to a Third Party of Project Background Information incidental to the sale or transfer of Project Foreground Information where that Party has already sold or transferred the same Project Background Information to the same Third Party.

11.5. Consent for Third Party sales and transfer of Project Foreground Information shall not be withheld except for reasons of foreign policy, national security, or law. A Party shall not refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such information to the same Third Party.

11.6. Any Project Background Information provided by one Party will be used by the other Party only for the purposes set forth in this MOA, unless otherwise consented to by the providing Party. Except to the extent permitted in paragraph 11.2., the prior written consent of each Party will be required for the use of Project Foreground Information for purposes other than those provided for in this MOA.

ARTICLE XII

LIABILITY AND CLAIMS

12.1. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Project, the following provisions will apply:

12.1.1. Each Party waives all claims against the other Party for injury to or death of its military or civilian personnel and for damage to or loss of its property (including jointly acquired property) caused by such personnel (which do not include Contractors) of that other Party.

12.1.2. Claims arising under or related to any Contract awarded pursuant to Article VI (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract.

12.2. Patent infringement claims shall be resolved in accordance with Article VII of this MOU. All other claims will be dealt with by each Party in accordance with applicable law and any international agreements between the Parties.

ARTICLE XIII

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

13.1. Customs duties, import and export taxes, and similar charges shall be administered in accordance with each Party's respective laws and regulations. Insofar as existing national laws and regulations permit, the Parties shall endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this Project.

13.2. Each Party shall use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Party in whose country they are levied shall bear such costs.

ARTICLE XIV

SETTLEMENT OF DISPUTES

14.1. Disputes between the Parties arising under or relating to this Agreement shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

ARTICLE XV

LANGUAGE

15.1. The working language for the Project shall be the English language.

15.2. All data and information generated under this Agreement and its implementing Contracts and provided by one Party to the other Party shall be furnished in the English language.

ARTICLE XVI

AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION

16.1. All activities of the Parties under this Agreement shall be carried out in accordance with applicable laws and regulations and the obligations of the Parties shall be subject to the availability of appropriated funds for such purposes.

16.2. Except as otherwise provided, this Agreement may be amended only by the mutual written consent of the Parties.

16.3. This Agreement may be terminated at any time upon the written consent of the Parties. In the event both Parties consent to terminate this Agreement, the Parties shall consult prior to the date of termination to ensure termination on the most economical and equitable terms.

16.4. Either Party may terminate this Agreement upon 120 days written notification to the other Party. Such notice shall be the subject of immediate consultation by the EAs to decide upon the appropriate course of action. In the event of such termination, the following rules apply:

16.4.1. The terminating Party shall continue participation, financial or otherwise, up to the effective date of termination.

16.4.2. Each Party shall bear the costs it incurs as a result of termination.

16.4.3. All Project Information and rights therein received under the provisions of this Agreement prior to the termination shall be retained by the Parties, subject to the provisions of this Agreement.

16.5. The respective rights and responsibilities of the Parties regarding Article VII (Disclosure and Use of Project Information), Article VIII (Controlled Unclassified Information), Article X (Security), Article XI (Third Party Sales and Transfers and Alternate Uses), and Article XII (Liability and Claims), shall continue notwithstanding termination or expiration of this Agreement.

16.6. This Agreement, which consists of 16 sections, shall enter into force upon signature by both Parties and shall remain in force for 5 years, unless terminated under the provisions of paragraphs 16.3 and 16.4. It may be extended by written agreement of the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE, in duplicate, in the English language.

FOR THE DEPARTMENT OF
DEFENSE OF THE UNITED
STATES OF AMERICA


Signature

TED M. McFARLAND, Maj Gen, USAF
Asst Dep Under Sec of the Air Force
International Affairs
Name

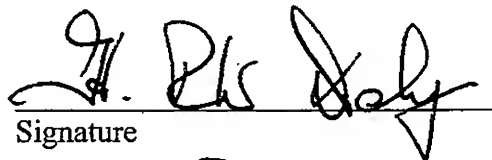
Title

23 APR 2002

Date

washington, DC
Location

FOR THE NORTH ATLANTIC
TREATY ORGANIZATION
CONSULTATION, COMMAND
AND CONTROL ORGANIZATION


Signature

Mr. H. P. Dicks
Name

General Manager, NC3A
Title

Date

7. Mai 02

Brussels, Belgium
Location